

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BENJAMIN D. GOLDBERG, :
Plaintiff, :
v. : Case No. 2:10-cv-553
MICHAEL J. ASTRUE, : JUDGE FROST
Commissioner of Social Security, : MAGISTRATE JUDGE KEMP
Defendant. :
:

ORDER

This is a social security case in which plaintiff, who is proceeding without counsel, has never filed a statement of errors identifying why he thinks the decision denying his application for benefits is wrong. The Court, acting through the Magistrate Judge, entered an order on June 17, 2010, giving plaintiff thirty days to file such a statement of errors after the administrative record was filed here. Under that order, since the record was filed on August 16, 2010, plaintiff had to file his statement of errors by September 15, 2010. When he did not, on September 22, 2010, the Court issued an order telling plaintiff that he had to file a statement of errors within 21 days or face dismissal of this action without prejudice for failure to prosecute.

Plaintiff did not file a statement of errors within 21 days of the date of that order, nor did he respond to it in any other way. Consequently, on October 18, 2010, the Magistrate Judge issued a Report and Recommendation recommending that this case be dismissed. A copy was sent to plaintiff by certified mail, and he signed for it on October 23, 2010. The Report and Recommendation told plaintiff he had fourteen days to object to the dismissal of his case. More than fourteen days have now passed, and he has still not filed a statement of errors or any

other response to any of the Court's orders.

The Report and Recommendation cited to decisions such as Link v. Wasbash R. Co., 370 U.S. 626 (1962), Boudwin v. Graystone Insurance Co., 756 F.2d 399 (5th Cir. 1985), Dynes v. Army Air Force Exchange Service, 720 F.2d 1495 (11th Cir. 1983), and Sepia Enterprises, Inc. v. City of Toledo, 462 F.2d 1315 (6th Cir. 1972) for the proposition that once the Court directs a party to take some action to prosecute a case, and warns the party about the consequences of not doing so, it may properly dismiss the case for failure to prosecute. That is a correct proposition of law. Further, plaintiff has not objected to the recommended dismissal of this case. Under these circumstances, the Report and Recommendation (#7) is **ADOPTED**. This case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE